

1984 WL 249914 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1984

*1 The Honorable Jackson V. Gregory
Member
House of Representatives
Post Office Box 1217
Walterboro, South Carolina 29488

Dear Representative Gregory:

You have asked whether the law firm of an attorney elected by the General Assembly to membership on a state university board of trustees may continue to represent the university on an ad hoc basis and, if so, what steps the attorney-trustee should take to avoid any appearance of a conflict of interest. It is my opinion that the law firm of the attorney-trustee could continue to represent the university on an ad hoc basis as long as the attorney-trustee followed the requirements of South Carolina's Ethics Act.

A state university trustee, as a public official,¹ would be subject to the provisions of South Carolina's Ethics Act, [Section 8-13-10 et seq., Code of Laws of South Carolina](#) (1976 and 1983 Cum.Supp.). Section 8-13-410 mandates that public officials not use their office for financial gain:

(1) No public official . . . shall use his official position or office to obtain financial gain for himself.

(2) No public official . . . shall participate directly or indirectly in a procurement when he has knowledge or notice that:

(a) he or any business with which he is associated has a financial interest pertaining to the procurement;

(b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

Clearly, the attorney-trustee is prohibited from using his position as trustee for personal financial gain or financial gain for his law firm. Additionally, he is prohibited from direct or indirect participation in any procurement in which he or the law firm would have a financial interest.

Another prohibition is expressed in Section 8-13-440 that '[n]o public official . . . shall use or disclose confidential information gained in the course of or by reason of his official position or activities in any way that would result in financial gain for himself or for any other person.' This statute would prohibit the attorney-trustee from divulging information to his law firm or any other person for the purposes of (for example) advising that a claim, cause of action, defense, or whatever exists, the result of which would be financial gain for any person.

Section 8-13-500(3) contains the following concerning breaches of ethical standards:

It shall be a breach of ethical standards for a business, in which a . . . public official has a financial interest, knowingly to act as a principal or as an agent for anyone other than the State or other governmental entity with which he is associated in connection with any contract, claim or controversy, or any judicial proceeding in which the public . . . official either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation,

or otherwise, or which is the subject of the official's . . . official responsibility, where the State or governmental entity is a party or has a direct and substantial interest.

***2** The actions which the attorney-trustee must take to avoid the appearance of a conflict of interest are specified in Section 8-13-460 and include the following:

Any public official . . . who, in the discharge of his official duties, would be required to take action or make a decision which would substantially affect directly his personal financial interest or those of . . . a business with which he is associated, shall instead take the following actions:

(a) Prepare a written statement describing the matter requiring action or decisions, and the nature of his potential conflict of interest with respect to such action or decision.

(c) . . . If the public official is a member of the governing body of any agency, commission, board, . . . or other political subdivision, he shall furnish a copy to the presiding officer and to the members of that governing body, who shall cause such statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists, and shall cause such disqualification and the reasons therefor to be noted in the minutes.

I would advise that the Ethics Act would not prohibit the attorney-trustee's law firm from representing the university on an ad hoc basis as long as the following mandates from the Ethics Act are followed: The attorney-trustee must not in any way use his position on the board of trustees to solicit business for his firm. He must not use confidential information gained in his capacity as trustee to benefit his law firm. The law firm must refrain from acting as principal or agent in any contract, claim, controversy, or judicial proceeding against the university if the attorney-trustee has personally and substantially participated in the procurement of his law firm's services. Additionally, the attorney-trustee must prepare a statement detailing the nature of the potential conflict of interest, furnishing a copy to the presiding officer and other members of the board of trustees. The attorney-trustee would then be excused from deliberations, discussions, or votes in the matter.² The attorney's disqualification and reason therefor are to be noted in the minutes of the meeting.

You may wish to seek opinions concerning this matter from other advisory bodies. For instance, there are several Ethical Considerations and Disciplinary Rules in the Code of Professional Responsibility which are related to the situation addressed in this opinion. Because an interpretation of that Code is outside the province of this Office, you may wish to consult the South Carolina Bar Ethics Advisory Committee. Furthermore, you may wish to consult the State Ethics Commission, although we note that in SEC 82-028 and SEC 84-021, the Commission found it permissible for an official's business (in SEC 84-021, a law firm) to render services to the public body on which the official was serving, as long as the official did not participate in the procurement process.

***3** With kindest personal regards, I am
Sincerely,

T. Travis Medlock
Attorney General

Footnotes

- 1 The term 'public official' includes 'any elected or appointed official of the State, county, municipality, or other political subdivision, other than the judiciary.' A state university would be considered a political subdivision; see, for example, Sections 59-117-40 (University of South Carolina); 59-116-60 (Clemson University); 59-121-40 (The Citadel).
- 2 While the statute does not require the official with a potential conflict of interest to remove himself from the meeting at which such deliberations, discussion or voting is to take place, this Office suggests that such procedure be followed. Even though the attorney-trustee has otherwise complied with the Ethics Act, his continued presence during discussion, deliberations, or voting could chill an effective discussion or indirectly exert some influence during the voting. We believe the Ethics Act was intended to prevent such indirect influence or participation as well.

1984 WL 249914 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.